The courts made the original long and short-haul clause to a large extent ineffective by construing the phrase "under substantially similar circumstances and conditions" so that competition entitled the carrier to charge a lower rate for the longer haul without original authorization from the Commission. *Texas Pacific Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 197; *Interstate Commerce Commission* v. *Alabama Midland Ry. Co.*, 168 U. S. 144. This phrase was struck out by the 1910 amendments and the principal case deals with the constitutionality and effect of the amended section. See 36 U. S. STAT. AT LARGE, 547. Undoubtedly the power to fix and regulate rates was one which Congress might constitutionally exercise, but the vital question concerns the validity of the delegation of this power to the Commission. Under modern conditions, with the increasing exercise of the federal power over commerce, it has become necessary and desirable for Congress to act to a large extent through such administrative tribunals. See this issue of the REVIEW, p. 95. To deny the constitutionality of such delegation would seriously impair effective federal control. That the section of the Commerce Act in question makes a real delegation of legislative power to the Commission seems indubitable, and the delegation extends further than any previous cases, in that Congress imposes no standard but the general scope and purposes of the act, a standard so vague as to amount in practice to nothing more than the discretion of the Commission itself. *New York, N. H. & H. R. Co.* v. *Interstate Commerce Commission*, 200 U. S. 361. The nearest approach to the principal case is the line of cases holding that Congress may empower the Secretary of War to order the removal of obstructions to navigation. *Union Bridge Co.* v. *United States*, 204 U. S. 364; *Monongahela Bridge Co.* v. *United States*, 216 U. S. 177. But the statute in these cases does not attempt to delegate nearly as extensive powers as the Commerce Act, for it lays down a fairly definite standard and empowers the Secretary to determine whether it applies to the particular circumstances. 30 U. S. STAT. AT LARGE, 1121, 1153. In sustaining the constitutionality of the clause involved in the principal case, therefore, the Supreme Court has allowed the delegation of very broad powers, and the decision will surely lead to further delegations to administrative bodies in time to come. The opinion of the court purports to introduce no new principle, and in failing to face the issue squarely, it is somewhat unsatisfactory. A more definite pronouncement on the subject may be hoped for in the near future.

MASTER AND SERVANT — WORKMAN'S COMPENSATION ACTS — WHETHER OCCUPATIONAL DISEASE IS AN "ACCIDENT." — The plaintiff's husband died from lead poisoning as a result of continuous exposure to red lead in the defendant's factory. The Workmen's Compensation Act of Michigan provides for compensation for "personal injuries," but in the title and in other parts of the act, "accidents" is the only word used. There is also a provision for notice "within ten days after the occurrence of the accident." *Held*, that the plaintiff is not entitled to compensation. *Adams* v. *Acme White Lead & Color Works*, 148 N. W. 485 (Mich.).

For a discussion of the question involved, see 27 HARV. L. REV. 766. The Massachusetts case there commented on may be reconciled with the principal case on the ground that the statute there speaks of "injuries," instead of "accidents," and contains no provision requiring the date of the injury to be definitely proved. Phraseology similar to that of the Michigan statute has led to the same result in England as in the Michigan case. *Broderick* v. *London County Council*, [1908] 2 K. B. 807.

NEGLIGENCE — DUTY OF CARE — VIOLATION OF TENEMENT HOUSE STATUTE REQUIRING FIRE ESCAPES. — A statute required that all tenement houses of

a certain class should be provided with fire escapes, but unlike the previous act gave no civil action for a breach. The defendant inherited a tenement not properly equipped, and, in a fire a month later, the plaintiff's wife was killed as a result of the absence of fire escapes. The plaintiff sued for negligence, but was allowed to amend and substitute the non-performance of statutory duty as the basis of his action. *Held*, that he cannot recover on that theory. *Evers* v. *Davis*, 90 Atl. 677 (N. J. Ct. Err. and App.).

In this case the court's opinion closely follows and quotes at length from Dean Thayer's article in a recent issue of the REVIEW. See 27 HARV. L. REV. 317. It states admirably that in the absence of an express statutory provision for civil action, recovery for a breach of the statute depends on common law principles of negligence. But the statute in question prescribed an affirmative duty, and its violation was a nonfeasance, so that evident legislative intention to create a new private duty toward those for whose benefit the statute was passed is essential. *Cowley* v. *Newmarket Local Board*, [1892] A. C. 345. In view of the omission of the former act's provision for civil remedy, it may well be doubted whether the legislature intended to impose any duty on the landlord in favor of the tenant or his family and change the common-law rule of no liability for open defects of the premises to that extent. See *Land* v. *Fitzgerald*, 68 N. J. L. 28. *Cf. Willy* v. *Mulledy*, 78 N. Y. 310. The statute may conceivably be regarded, however, as stamping the maintenance of such tenements without fire escapes as dangerous conduct, so that the landlord would be guilty of positive wrong, and liable for his negligence in disregarding the legislative warning. See *Dawson & Co.* v. *Bingley Urban District Council*, [1911] 2 K. B. 149, 159. The fact that in the principal case the landlord inherited the premises only a month before the fire, suggests another interesting question, on which there is no direct authority. The nearest analogy is the case of a public officer, excused from the performance of a statutory duty because the necessary means were not furnished him. See *Weise* v. *Tate*, 45 Ill. App. 311. It would seem likewise proper to deny recovery against one who has made every reasonable effort to comply with the statute, but has failed because of lack of time. For his conduct has been that of a reasonable prudent man with reference to the statute.

POLICE POWER — INTEREST OF PUBLIC HEALTH — CONSTITUTIONALITY OF EUGENIC MARRIAGE LAWS. — A Wisconsin statute forbids the county clerk to issue a marriage certificate to any male applicant who does not produce a physician's certificate stating the applicant to be free from acquired venereal diseases, and provides that the physician's fee for such examination shall not exceed three dollars. *Held*, that the statute is constitutional. *Peterson* v. *Widule*, 147 N. W. 966 (Wis.).

A discussion of the case in the lower court will be found in 27 HARV. L. REV. 573. Under the upper court's construction of the statute, it does not require a laboratory test as the basis of the certificate, and the law therefore ceased to be objectionable as an unreasonable restriction on the right to marry.

POLICE POWER — NATURE AND EXTENT — FEDERAL PROTECTION OF MIGRATORY BIRDS. — An act of Congress declared that migratory birds were under the protection of the federal government and authorized the Department of Agriculture to make regulations in regard to hunting them. The defendant, indicted for violation of one of these regulations, challenges the constitutionality of the act. *Held*, that the act is unconstitutional. *United States* v. *Shauver*, 214 Fed. 154 (Dist. Ct., E. D., Ark.).

As representative of the people, each state controls fish and game within its borders. *Geer* v. *Connecticut*, 161 U. S. 519; *In re Mattson*, 69 Fed. 535. But when game leaves the state, its sovereignty ceases. See *Behring Sea Ar-*